

RACHEL SWINK,)
)
Plaintiff,)
)
vs.) Case No. 4:07CV01942 ERW
)
AT&T,)
)
Defendant.)

AT&T¹ (“Defendant”) has asserted that Rachel Swink (“Plaintiff”) has sued the incorrect entity. It appears to the Court that this is a “misnomer situation” in which Plaintiff “has named and served the right defendant by the wrong name.” *See Roberts v. Michaels*, 219 F.3d 775, at 778 (8th Cir. 2000). Defendant received notice of this suit and Defendant’s participation in this action demonstrates that they “knew . . . that, but for a mistake concerning the identity of the proper party, the action would have been brought against” Southwestern Bell Telephone Company instead of AT&T. Fed. R. Civ. P. 15(c)(3)(B). Plaintiff is entitled to relief from her mistake under the provisions of Fed. R. Civ. P. 4(a) and Fed. R. Civ. P. 15(c)(3). *See Roberts*, 219 F.3d at 778.

IT IS HEREBY ORDERED that Plaintiff shall file an amended complaint naming Southwestern Bell Telephone Company as Defendant on or before **May 2, 2008.** Upon receipt of the amended complaint, the Court will issue an amended summons.

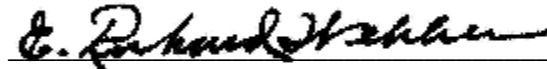
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IT IS FURTHER ORDERED that Plaintiff's Response to AT&T's Motion for Extension of Time and Plaintiff's Motion for Summary Judgment [doc. #7] is **DENIED, as moot.**

IT IS FURTHER ORDERED that "AT&T's" and Southwestern Bell Telephone Company's Motion for Summary Judgment [doc. #12] is **DENIED, as moot.**

IT IS FURTHER ORDERED that "AT&T's" and Southwestern Bell Telephone Company's Motion to Strike, or, in the alternative, Motion for Leave to File (1) a Response to Plaintiff's Statement of Controverted Material Facts; and (2) a Supplemental Response to Plaintiff's Motion for Summary Judgment [doc. #23] is **DENIED, as moot.**

Dated this 14th Day of April, 2008.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written over a horizontal line.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE